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JANUARY 20, 2010

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS  
DETECTIVE  
nunc pro tunc, October 14, 2009  
NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF :  
ADMINISTRATIVE ACTION :  
MARCO B. FERNANDO, M.D. :  
LICENSE NO. 25MA02674800 :  
FINAL DECISION AND ORDER :  
TO PRACTICE MEDICINE & SURGERY :  
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Medical Examiners (the "Board") upon the filing of a July 28, 2009 Administrative Complaint and Notice of Hearing by Attorney General Anne Milgram, by Deputy Attorney General ("DAG") Kathy Mendoza. The five count Complaint alleged that respondent had engaged in medical treatment of multiple patients, including the performance of surgery at various Hudson County hospitals during a period when he did not hold a current license to practice, in violation of N.J.S.A. 45:9-6, N.J.S.A. 45:9-6.1, N.J.S.A. 45:1-21(b) and (e); that for periods of time he engaged in medical practice in New Jersey without the statutorily required malpractice insurance, in violation of N.J.S.A. 45:9-19.17(a) and N.J.S.A. 45:1-21(h); that he provided his physician employer a copy of his license that was fraudulently altered to reflect that the license was current at a time when the license was expired, which constitutes a violation of N.J.S.A. 45:1-21(b) and (e); that he billed third-party payors for

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medical services not rendered in violation of N.J.S.A. 45:1-21(b), (e), and (i); and that he wrongfully disclosed patients' individually identifiable health and other personal information, all violating N.J.S.A. 45:1-21(b), (e), and (i).

The time to file an Answer expired and was not extended, and respondent failed to file an Answer. Subsequently on September 19, 2009 the Attorney General filed a Notice of Motion for Default, with a return date scheduled for October 14, 2009.

At the time set for hearing the State, represented by DAG Mendoza, presented to the Board evidence that reasonable efforts had been made to serve respondent with the Complaint as well as notice of the Motion for Default. DAG Mendoza entered into the record a Certification of Service by Soo Yoo Kim, Enforcement Bureau Investigator, verifying that on September 18, 2009, he left a sealed envelope from DAG Mendoza at respondent's address, 4 Clarken Drive in West Orange, after confirming with the mail carrier that respondent receives mail at the aforementioned address. (Exhibit S-D1). DAG Mendoza also entered into the record a Certification of Service by Oscar G. Amaya, Investigator III of the Enforcement Bureau, certifying that on September 18, 2009 he personally served respondent with a sealed envelope from DAG Mendoza and respondent acknowledged receipt by affixing his signature to a copy of the front of the envelope in the investigator's presence. (Exhibit S-D1). DAG Mendoza further

furnished the Board with a copy of a letter, dated October 7, 2009, notifying respondent that the Motion for Default would be heard on October 4, 2009<sup>1</sup> at 10:00 a.m. and enclosing a duplicate of the Notice of Motion previously served upon him. (Exhibit S-D2). The letter was sent to respondent, with delivery confirmed, at his address of record and two other addresses - 2120 Kennedy Boulevard, Jersey City, New Jersey 07305; 4 Clarken Drive, West Orange, New Jersey 07052; and 544 Summit Avenue, Jersey City, New Jersey 07306. (Exhibit S-D2). Additionally, DAG Mendoza submitted a letter from respondent's former counsel, Richard West, Esq., to DAG Mendoza stating that he had forwarded to respondent packages which contained the Verified Complaint with Notice of Hearing and the Motion for Default. (Exhibit S-D3). In addition to service of the Verified Complaint and Notice of Motion for Default, the DAG represented that she had made more than six unanswered phone calls to respondent in order to discuss the pending motion at a phone number which he had answered in the past.

The DAG asked the Board to deem the multiple, cumulative efforts at service and actual service of documents on respondent more than sufficient to put him on notice of the charges pending against him and the motion and hearing on default. The DAG also informed the Board that respondent had not answered or responded,

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<sup>1</sup> The October 7, 2009 letter contained a typographical error indicating the date of the hearing was on October 4 (which preceded the date of the letter), rather than October 14.

and that a search of the vicinity of the hearing room revealed that respondent was not present.

The Board found that adequate service had been effectuated of both the Verified Complaint and the Notice of Motion for Default as respondent was actually served at his address of record with the Board. A respondent can not evade process by failing to respond. Therefore the Board voted to find respondent in default and directed the State to proceed with its proofs regarding the merits of the case against respondent.

At the hearing the DAG called as a witness Marianne Nucci, R.N., an investigator employed by the Enforcement Bureau of the Department of Consumer Affairs who conducted the investigation of respondent. She provided testimony as to her first hand knowledge of the exhibits and her interview of respondent.

The DAG then discussed the documents that were entered into evidence to prove the allegations in each of the five (5) counts of the Complaint. First, DAG Mendoza established that respondent did not hold a current license to practice medicine from July 1, 2005 until March 20, 2007 by submitting a Certification of William Roeder, Executive Director of the New Jersey Board of Medical Examiners certifying that respondent's license to practice medicine in New Jersey expired on June 30, 2005 and was reinstated on March 21, 2007. (Exhibit S-2). The date of respondent's reinstatement was further evidenced by a computer (License 2K) printout from the

Division of Consumer Affairs confirming the March 21, 2007 reinstatement date. (Exhibit S-1).

As evidence that respondent did not carry medical malpractice insurance at relevant times, DAG Mendoza produced respondent's 2009 biennial renewal application wherein his response to the question "Do you have the required medical malpractice coverage or a letter of credit?" was "No." (Exhibit S-4). Further, the DAG referred the Board to a letter from USI Insurance Services to DAG Mendoza stating that

Dr. Fernando was insured through our office from 7/16/02 to 7/16/05 with ProSelect Insurance Company. He was then insured with Professional Underwriters Liability Insurance Company from 11/16/06 to 11/16/08. His policy did not renew 11/16/08 as he did not pay the premium. We do not currently handle any insurance coverage for him and have not since 11/16/08. (Exhibit S-5).

DAG Mendoza then elicited testimony from Investigator Nucci and referred to documentation that showed respondent engaged in the practice of medicine during the time that he did not hold a current license to practice medicine, from July 1, 2005 through March 20, 2007, and during the time that respondent did not carry malpractice insurance, from July 17, 2005 until November 16, 2008. Most notably, the DAG referred the Board to a transcript of respondent's sworn testimony before the Preliminary Evaluation Committee of the Board provided in the presence of respondent's counsel in which respondent admits performing medical services without a license or

malpractice insurance. (Exhibit S-11). As further evidence, medical records of the nine patients named in the Verified Complaint were submitted to the Board detailing dates of admissions, discharges and surgeries performed by respondent while unlicensed at Hudson County hospitals from June 22, 2005 through August 12, 2005. (Exhibit S-6AA; Exhibits S-6A through S-6I). In addition to the patients' medical records, a Final Disposition Report from the Special Investigations Unit of NJM Insurance Group was submitted and pertained to respondent's treatment of a claimant at a time when respondent's medical license was expired. (Exhibit S-7). A letter from Jersey City Medical Center and Greenville Hospital to the Board was also admitted into evidence. It advised that respondent performed surgeries at both facilities while his license was expired. (Exhibit S-8).

The DAG then briefly recounted the evidence supporting the allegation that respondent falsified the expiration date on his license. A copy of respondent's medical license was submitted to the Board, showing that the valid date on the license was listed as being a three-year period from 2003 to 2006, which was inconsistent with the biennial (two-year) license renewal process. (Exhibit S-10B).

DAG Mendoza then presented documentation that respondent billed third parties for medical services not rendered. The DAG submitted insurance records relating to respondent's billing for

electro-diagnostic tests of eight individual patients. The insurance records all documented respondent billing for identical CPT codes "muscle test-4 limbs, motor nerve, sense nerve, and H-reflex" and all were disputed by the patients as services not performed. (Exhibits S-12A to S-12H). Further, the DAG referred the Board to letters from National Governmental Services (Medicare) to respondent regarding incorrect billing of neuro diagnostic services provided to five individual patients. (Exhibits S-15A, S-15C to S-15F).

The DAG continued by recounting the evidence that respondent wrongfully disclosed patients' individually identifiable health and other personal information. The proof submitted included a sworn statement wherein respondent admitted to providing patient identification information and copies of patients' insurance cards to Edwardo of Barclay Medical Associates in exchange for payment. (Exhibit S-16).

It appears, given the default, that nothing in the record rebuts any of the proofs submitted. We find the Attorney General has sustained her burden of proof on all five (5) Counts of the complaint. The un rebutted evidence presented by the State demonstrated that respondent practiced medicine after his license had expired and without malpractice insurance. We further find that respondent produced a falsified medical license to give the fraudulent impression that his license was valid until 2006 when

it expired in 2005, in line with the biennial renewal process in place in this State. We find that respondent billed third parties for medical services that respondent never performed with respect to multiple patients. Last, we find that respondent wrongfully disclosed identifiable health and personal information of patients. We therefore conclude Respondent practiced medicine and billed for services while unlicensed in violation of N.J.S.A. 45:9-6; N.J.S.A. 45:9-6.1; N.J.S.A. 45:1-21 (b) and (e). Respondent practiced medicine and surgery without mandatory medical malpractice insurance in violation of N.J.S.A. 45:9-19.17(a) and N.J.S.A. 45:1-21(h). Respondent engaged in professional misconduct when he produced a copy of his medical license with a falsified expiration date in violation of N.J.S.A. 45:1-21(b) and (e). Respondent permitted the use of his name and license in order to receive payment for services not rendered in violation of N.J.S.A. 45:1-21(b), (e) and (i). Lastly, respondent wrongfully disclosed individually identifiable health information which actions constitute medical identification theft and insurance fraud in violation of N.J.S.A. 45:1-21(b), (e) and (i).

#### **DISCUSSION ON PENALTY AND COSTS**

The Board finds that respondent's conduct represents a total abrogation of the duties incumbent on a licensee of the Board. The public relies on the licensure agency to assure that physicians in



whom they entrust their care are competent, properly regulated, insured, protect their confidential information, are honest, and do not steal the limited health care dollars of publicly funded programs. Given the unrebutted evidence of fraud, deception, and unlicensed practice we are of the opinion that revocation of licensure and a substantial monetary penalty are necessary to protect New Jersey patients and are appropriate given the pervasive pattern of dishonest acts proven.

The record was held open until November 4, 2009 for the submission of an application for costs pursuant to N.J.S.A. 45:1-25. DAG Mendoza submitted to the Board and served on respondent an October 30, 2009 Certification supported by detailed time sheets documenting time expended on the prosecution of the case by DAG Mendoza and DAG Michael Rubin, both of whom have been admitted to the practice of law in New Jersey for more than ten (10) years. The Certification included information derived from a Department of Law and Public Safety, Division of Law memorandum detailing the uniform rate of compensation for the purpose of recovery of attorneys' fees established in 1999 and amended in 2005, and setting the hourly rate of a DAG with more than ten (10) years of legal experience at \$175.00 per hour, which has been approved in prior litigated matters and appears to be well below the community standard. Further documentation included details as to investigation costs, transcript costs, and costs of service.

No opposition to the Cost Application was received from respondent. The Board considered the submissions at its November 4, 2009 full Board meeting and found the costs and fees adequately documented and sufficiently detailed, and reasonable as to the rates, time expended and necessity of the activities performed to advance the prosecution of this matter. The Board voted to impose the full costs as appropriate given the severity of the acts engaged in, and the magnitude of the case. Costs are therefore assessed as follows:

\$10,797.50	Attorney Fees
28,274.84	Investigation Costs
452.50	Court Reporter and Transcripts Costs
+ 483.41	Costs of Service
\$40,008.25	Total Costs

**IT IS THEREFORE ON THIS 20TH DAY OF JANUARY 2010,**

**ORDERED:**

1. Marco B. Fernando's license to practice medicine in the State of New Jersey is hereby revoked nunc pro tunc, effective immediately upon oral announcement on the record on October 14, 2009.

2. Marco B. Fernando is hereby assessed civil penalties pursuant to N.J.S.A. 45:1-22 in the amount of ten thousand dollars (\$10,000.00) for the first count; twenty thousand dollars (\$20,000.00) for the second count; twenty thousand dollars (\$20,000.00) for the third count; twenty thousand dollars (\$20,000.00) for the fourth count; and twenty thousand dollars

(\$20,000.00) for the fifth count. No later than thirty (30) days after the filing of this Order, Respondent shall submit payment for the civil penalties totaling ninety thousand dollars (\$90,000.00) by certified check or money order made payable to the "State of New Jersey" and addressed to William Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, P.O. Box 183, Trenton, New Jersey 08625.

3. Marco B. Fernando is hereby assessed forty thousand, eight dollars and twenty five cents (\$40,008.25) as costs to the State in this matter, which costs are detailed above.

4. In the event the civil penalty and costs are not timely submitted to the Board, the Board and the Attorney General may file a Certificate of Debt and institute such collection and other proceedings as are available under applicable law.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: 

Paul C. Mendelowitz, M.D.  
Board President

## EXHIBIT LIST

### Attorney General's Exhibits - Service

- S-D1      Service/Delivery Request, dated September 17, 2009;  
            Certification of Service by Soo Yoo Kim, Enforcement  
            Bureau Investigator, dated September 25, 2009;  
            Certification of Service by Oscar G. Amaya,  
            Investigator III of the Enforcement Bureau, dated  
            September 22, 2009
- S-D2      Letter from DAG Mendoza to respondent, dated October 7,  
            2009, containing notification of the hearing<sup>2</sup> for the  
            Motion for Default and enclosing a copy of the Notice  
            of Motion; UPS Proofs of Delivery (3 total)
- SD-3      Facsimile letter from Richard West, Esq. to DAG  
            Mendoza, dated October 13, 2009; Federal Express Proof  
            of Delivery and an acknowledgment of service, signed on  
            September 24, 2009

### Attorney General's Exhibits - Case in Chief

- S-1      Computer printout License 2K for Marco B. Fernando,  
            M.D.
- S-2      Certification of William Roeder, Executive Director of  
            the New Jersey Board of Medical Examiners, dated May  
            30, 2007
- S-3      E-mail from Nancy Zecca to Georgine Coleman regarding  
            Marco Fernando reinstatement, dated October 13, 2009
- S-4      Facsimile (including a portion of Marco Fernando's 2009  
            biennial renewal application), dated October 9, 2009
- S-5      Facsimile letter from Donna Spirt, Account Manager, USI  
            Insurance Services, to DAG Mendoza, dated October 12,  
            2009
- S-6AA     Chart prepared by the Enforcement Bureau

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<sup>2</sup>      The October 7 letter had a typographic error of October  
4 rather than October 14. October 4 predated the letter.

- S-6A Medical record of patient GR admitted on June 22, 2005 to Liberty Health, including July 14, 2005 Jersey City Medical Center operative report
- S-6B Medical record of patient CS admitted on June 24, 2005 to Liberty Health, Greenville Hospital, including a June 28, 2005 surgical site identification form
- S-6C Medical record of patient EG admitted on July 6, 2005 to Liberty Health, Greenville Hospital, including a July 6, 2005 surgical site identification form
- S-6D Medical record of patient WS admitted on July 9, 2005 to Liberty Health, Greenville Hospital
- S-6E Medical record of patient RA admitted on July 13, 2005 to Liberty Health, including a July 17, 2005 consultation
- S-6F Medical record of patient ZM admitted on July 16, 2005 to Liberty Health, Greenville Hospital, including a July 17, 2005 surgical site identification form
- S-6G Medical record of patient FA admitted on July 28, 2005 and August 7, 2005 to Liberty Health, Greenville Hospital, including a July 28, 2005 consent form
- S-6H Medical record of patient AS admitted on August 4, 2005 to Liberty Health, Jersey City Medical Center, including an August 8, 2005 surgical site identification form
- S-6I Medical record of patient CH admitted on August 12, 2005 to Liberty Health, Jersey City Medical Center, including an August 12, 2005 surgical site identification form
- S-7 January 25, 2007 packet forwarding the Final Disposition Report and attachments from the Special Investigations Unit, NJM Insurance Group
- S-8 Letter from Jersey City Medical Center and Greenville Hospital to William Roeder, Executive Director, New Jersey State Board of Medical Examiners, dated September 28, 2005
- S-9 Letter from Liberty Health to the Enforcement Bureau, dated January 8, 2008

- S-10A Transcript of December 11, 2006 interview of Marco Fernando by New Jersey Manufacturers Special Investigation Unit [only includes pages one and ten; missing pages two through nine]
- S-10B Copy of medical license of Marco Fernando with a valid date from 2003 to 2006
- S-11 Transcript of Preliminary Evaluation Committee sworn testimony of Marco Fernando, M.D. with counsel Richard West, Esq., dated September 3, 2008
- S-12A Insurance records relating to respondent's billing for electro-diagnostic tests of patient EK
- S-12B Insurance records relating to respondent's billing for electro-diagnostic tests of patient DS, including respondent's cashed check from the insurance company for said services
- S-12C Insurance records relating to respondent's billing for electro-diagnostic tests of patient RF, including an affirmed statement by RF denying that he underwent any such tests or treatment by respondent
- S-12D Insurance records relating to respondent's billing for electro-diagnostic tests of patient JL
- S-12E Insurance records relating to respondent's billing for electro-diagnostic tests of patient JK
- S-12F Insurance records relating to respondent's billing for electro-diagnostic tests of patient TW
- S-12G Insurance records relating to respondent's billing for electro-diagnostic tests of patient JT
- S-12H Insurance records relating to respondent's billing for electro-diagnostic tests of patient EB
- S-13 North Jersey Medical Services initial evaluation form, dated September 27, 2005 and signed by respondent
- S-14 Packet containing: an October 1, 2007 cover letter from County of Passaic, Department of Senior Services, Disability & Veterans' Affairs; copy of respondent's offer of free healthcare screening; copies of Medicare

Summary notices; and a statement of Blue Cross/New Jersey Investigator

- S-15A Letter from National Governmental Services (Medicare) to respondent regarding incorrect billing of neuro diagnostic services provided to patient CM, dated December 18, 2007
- S-15B Fax cover and Explanation of Benefits for neuro diagnostic services billed by respondent for patient FL, dated October 1, 2007
- S-15C Letter from National Governmental Services (Medicare) to respondent regarding incorrect billing of neuro diagnostic services provided to patient FC, dated December 18, 2007
- S-15D Letter from National Governmental Services (Medicare) to respondent regarding incorrect billing of neuro diagnostic services provided to patient FJP, dated December 18, 2007
- S-15E Letter from National Governmental Services (Medicare) to respondent regarding incorrect billing of neuro diagnostic services provided to patient EML, December 18, 2007
- S-15F Letter from National Governmental Services (Medicare) to respondent regarding incorrect billing of neuro diagnostic services provided to patient CG, December 18, 2007
- S-15G Letter and attachments from Medicare Part B Recovery Unit to respondent requesting that respondent refund the overpayment which Medicare had made with respect to patient JL, dated September 20, 2007
- S-16 January 4, 2008 sworn statement of Marco Fernando made to Marianne Nucci of the Enforcement Bureau
- S-17A July 31, 2007 letter and claim payment produced by respondent to investigator Nucci at January 4, 2008 interview
- S-17B Claim payments and explanation of benefits produced by respondent at January 4, 2008 interview from Aetna relating to patient CG

- S-17C Photocopied checks written by respondent in the summer of 2007 as payment for referrals
- S-18 Corporate papers of Medical Health Care Community Center of New Jersey, Inc. listing Nagy Bernaba, M.D., and subsequently, Samia Gray, as officer/director/president

Attorney General's Exhibits - Costs

- A. Time sheets documenting attorney fees totaling 61.7 hours expended on the prosecution of the case from January 1, 5005 to September 28, 2009 by Deputy Attorneys General Kathy Mendoza and Michael Rubin who have both been admitted to the practice of law in New Jersey for more than ten (10) years
- B. September 1, 1999 Schedule of Attorneys Fees setting forth the uniform rate of compensation for Legal Staff
- C. June 17, 2005 Department of Law and Public Safety, Division of Law memorandum setting forth an amendment to the uniform rate of compensation for attorneys documenting an hourly rate of \$175.00 for attorneys for more than 10 years of experience
- D. Packet including 1) November 13, 2008 Cost Estimate from Supervising Investigator Deborah Zuccarelli with [unsigned, undated] Certification of Costs for the Enforcement Bureau totaling \$5,801.62, Description Activity Reports, Revised Enforcement Cost Recovery/Hourly Rate Determination, 2) October 29, 2009 Certification of Costs from Supervising Investigator John Vatasin totaling \$20,031.20, Description Activity Report, June 24, 2007 Certification of June Levy, and 3) October 22, 2009 Certification of Costs of John T. Vatasin totaling \$2,442.02, Description Activity Report
- E. Affidavit of William Roeder dated October 8, 2009 certifying shorthand reporting costs incurred in this matter totaling \$452.50
- F. Certification of Richard Perry, Supervising Investigator dated October 30, 2009 totaling \$483.41 with an activity log documenting personal service on Dr. Fernando



**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF BOARD**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.